

AMENDED IN SENATE SEPTEMBER 6, 2001

AMENDED IN SENATE SEPTEMBER 4, 2001

AMENDED IN SENATE JULY 12, 2001

AMENDED IN SENATE JULY 10, 2001

AMENDED IN SENATE JUNE 21, 2001

AMENDED IN ASSEMBLY MAY 30, 2001

AMENDED IN ASSEMBLY MAY 1, 2001

AMENDED IN ASSEMBLY APRIL 19, 2001

AMENDED IN ASSEMBLY APRIL 5, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 489

Introduced by Assembly Member Migden

(Principal coauthor: Senator Machado)

(Coauthor: Senator Murray)

February 21, 2001

An act to add Division 1.6 (commencing with Section 4970) to the Financial Code, ~~and to add Section 777 to the Insurance Code~~, relating to lending.

LEGISLATIVE COUNSEL'S DIGEST

AB 489, as amended, Migden. Loans secured by real property.

Existing law provides for regulation of banks and savings associations by the Department of Financial Institutions. Existing law

provides for regulation of real estate brokers by the Department of Real Estate. Existing law provides for regulation of finance lenders and residential mortgage lenders by the Department of Corporations. Existing law provides that willful violations of provisions governing savings associations, real estate brokers, and residential mortgage lenders are crimes.

This bill would impose various requirements on consumer loans secured by specified real property, defined as “covered loans.” The bill would prohibit various acts in making covered loans, including the following: failing to consider the financial ability of a borrower to repay the loan, ~~selling individual or group financing specified types of credit insurance on a prepaid single premium basis without full disclosure of certain facts relevant to the loan into a consumer loan transaction,~~ recommending or encouraging a consumer to default on an existing consumer loan in order to solicit or make a covered loan that refinances the consumer loan, and making a covered loan without providing the consumer a specified disclosure. The bill would provide that a violation of its provisions would be subject to a civil penalty ~~and would also make a violation a crime punishable by a fine or imprisonment in a county jail.~~ ~~Because the bill would create new crimes, it imposes a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~ *no*.

The people of the State of California do enact as follows:

1 SECTION 1. Division 1.6 (commencing with Section 4970)
2 is added to the Financial Code, to read:

3

4 DIVISION 1.6. _____

5

6 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

7

8 4970. For purposes of this division:



1 ~~(a) “Affiliate” means any company that controls, is controlled~~
2 ~~by, or is under common control with, another company, as set forth~~
3 ~~in the federal Bank Holding Company Act.~~

4 ~~(b)~~

5 (a) “Annual percentage rate” means the annual percentage rate
6 for the loan calculated according to the provisions of the federal
7 Truth in Lending Act and the regulations adopted thereunder by
8 the Federal Reserve Board.

9 ~~(c)~~

10 (b) (1) “Covered loan” means a consumer loan in which the
11 original principal balance of the loan does not exceed two hundred
12 fifty thousand dollars (\$250,000) in the case of a mortgage or deed
13 of trust, and where one of the following conditions are met:

14 (A) For a mortgage or deed of trust, the annual percentage rate
15 at consummation of the transaction will exceed by more than eight
16 percentage points the yield on Treasury securities having
17 comparable periods of maturity on the 15th day of the month
18 immediately preceding the month in which the application for the
19 extension of credit is received by the creditor.

20 (B) The total points and fees payable by the consumer at or
21 before closing for a mortgage or deed of trust will exceed 6 percent
22 of the total loan amount.

23 (2) The dollar amount specified in paragraph (1) shall be
24 adjusted every five years in accordance with the California
25 Consumer Price Index.

26 ~~(d)~~

27 (c) “Points and fees” shall include the following:

28 (1) All items required to be disclosed as finance charges under
29 Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal
30 Regulations, including the Official Staff Commentary, as
31 amended from time to time, except interest.

32 (2) All compensation and fees paid to mortgage brokers in
33 connection with the loan transaction.

34 (3) All items listed in Section 226.4(c)(7) of Title 12 of the
35 Code of Federal Regulations, only if the person originating the
36 covered loan receives direct compensation in connection with the
37 charge.

38 ~~(e) “Credit insurance” means any individual or group credit~~
39 ~~life, credit disability, credit unemployment, accident, health, or~~
40 ~~loss of income insurance or any other line or subline of insurance~~

1 ~~which may become accepted as credit insurance by the insurance~~
2 ~~and lending industries or any debt cancellation or suspension~~
3 ~~agreement or contract, whether or not the debt cancellation or~~
4 ~~suspension agreement or contract coverage is insurance under~~
5 ~~applicable law.~~

6 ~~(f)~~

7 (d) “Consumer loan” means a consumer credit transaction that
8 is secured by real property located in this state used, or intended
9 to be used or occupied, as the principal dwelling of the consumer
10 *that is improved by a one-to-four residential unit.* “Consumer
11 loan” does not include a reverse mortgage, an open line of credit
12 as defined in Part 226 of Title 12 of the Code of Federal
13 Regulations (Regulation Z), or a consumer credit transaction that
14 is secured by rental property or second homes. *“Consumer loan”*
15 *does not include a bridge loan with a maturity of less than one year*
16 *if the purpose of the loan is a bridge loan connected with the*
17 *acquisition or construction of a dwelling intended to become the*
18 *consumer’s principal dwelling.*

19 ~~(g)~~

20 (e) “Original principal balance” means the total initial amount
21 the consumer is obligated to repay on the loan.

22 ~~(h)~~

23 (f) “Licensing agency” shall mean the Department of Real
24 Estate for licensed real estate brokers, the Department of
25 Corporations for licensed residential mortgage lenders and
26 licensed finance lenders and brokers, and the Department of
27 Financial Institutions for commercial and industrial banks and
28 savings associations and credit unions organized in this state.

29 ~~(i)~~

30 (g) “Licensed person” means a real estate broker licensed
31 under the Real Estate Law (Part 1 (commencing with Section
32 10000) of Division 4 of the Business and Professions Code), a
33 finance lender or broker licensed under the California Finance
34 Lenders Law (Division 9 (commencing with Section 22000)), a
35 residential mortgage lender licensed under the California
36 Residential Mortgage Lending Act (Division 20 (commencing
37 with Section 50000)), a commercial or industrial bank organized
38 under the Banking Law (Division 1 (commencing with Section
39 99)), a savings association organized under the Savings
40 Association Law (Division 2 (commencing with Section 5000)),

and a credit union organized under the California Credit Union Law (Division 5 (commencing with Section 14000)). Nothing in this division shall be construed to prevent any enforcement by a governmental entity against any person who originates a loan and who is exempt or excluded from licensure by all of the licensing agencies, based on a violation of any provision of this division. Nothing in this division shall be construed to prevent the Department of Real Estate from enforcing this division against a licensed salesperson employed by a licensed real estate broker as if that salesperson were a licensed person under this division. A licensed person includes any person engaged in the practice of consumer lending, as defined in this division, for which a license is required under any other provision of law, but whose license is invalid, suspended or revoked, or where no license has been obtained.

~~(j)~~

(h) “Originate” means to arrange, negotiate, or make a consumer loan.

~~(k)~~

(i) “Servicer” has the same meaning provided in Section 6 (i)(2) of the Real Estate Settlement Procedures Act of 1974.

CHAPTER 2. PROHIBITED ACTS

4973. The following are prohibited acts and limitations for covered loans:

(a) (1) A covered loan shall not include a prepayment fee or penalty after the first 36 months after the date of consummation of the loan.

(2) A covered loan may include a prepayment fee or penalty up to the first 36 months after the date of consummation of the loan if:

(A) The person who originates the covered loan has also offered the consumer a choice of another product without a prepayment fee or penalty.

(B) The person who originates the covered loan has disclosed in writing to the consumer at least three business days prior to loan consummation the terms of the prepayment fee or penalty to the consumer for accepting a covered loan with the prepayment penalty and the rates ~~and terms~~ , *points, and fees* that would be

1 available to the consumer for accepting a covered loan without a
2 prepayment penalty.

3 (C) The person who originates the covered loan has limited the
4 amount of the prepayment fee or penalty to an amount not to
5 exceed the payment of six months' advance interest, at the *contract*
6 rate of interest then in effect, on the amount prepaid in any
7 12-month period in excess of 20 percent of the original principal
8 amount.

9 (D) ~~The person who originates the~~ A covered loan will not
10 impose the prepayment fee or penalty if the covered loan is
11 accelerated as a result of default.

12 (E) The person who originates the covered loan will not finance
13 a prepayment penalty through a new loan that is originated by the
14 same person.

15 ~~(b) (1) A covered loan that requires the payment of the entire~~
16 ~~balance of the loan before the maturity date of the loan shall not~~
17 ~~require the payment of that balance until 60 months after the~~
18 ~~consummation of the loan.~~

19 *(b) (1) A covered loan with a term of 5 years or less may not*
20 *provide at origination for a payment schedule with regular*
21 *periodic payments that when aggregated do not fully amortize the*
22 *principal balance as of the maturity date of the loan.*

23 (2) For a payment schedule that is adjusted to account for the
24 seasonal or irregular income of the consumer, the total installments
25 in any year shall not exceed the amount of one year's worth of
26 payments on the loan. This prohibition does not apply to a bridge
27 loan. For purposes of this paragraph, "bridge loan" means a loan
28 with a maturity of less than 18 months that only requires payments
29 of interest until the time when the entire unpaid balance is due and
30 payable.

31 (c) A covered loan shall not contain a provision for negative
32 amortization such that the payment schedule for regular monthly
33 payments causes the principal balance to increase, unless the
34 covered loan is a first mortgage and the licensed person discloses
35 to the consumer that the loan contains a negative amortization
36 provision that may add principal to the balance of the loan.

37 (d) A covered loan shall not include terms under which
38 periodic payments required under the loan are consolidated and
39 paid in advance from the loan proceeds.



(e) A covered loan shall not contain a provision that increases the interest rate as a result of a default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or the acceleration for the indebtedness.

(f) (1) A person who originates covered loans shall not make or arrange a covered loan unless at the time the loan is consummated, the person reasonably believes the consumer, or consumers, when considered collectively in the case of multiple consumers, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources, other than the consumer's equity in the dwelling that secures repayment of the loan. In the case of a covered loan that is structured to increase to a specific designated rate, stated as a number or formula, at a specific predetermined date not exceeding 37 months from the date of application, this evaluation shall be based upon the fully indexed rate of the loan calculated at the time of application.

The consumer shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the consumer's total monthly debts, including amounts owed under the loan, do not exceed 55 percent of the consumer's monthly gross income, as verified by the credit application, the consumer's financial statement, a credit report, financial information provided to the person originating the loan by or on behalf of the consumer, or any other reasonable means.

(2) No presumption of inability to make the scheduled payments to repay the obligation shall arise solely from the fact that at the time the loan is consummated, the consumer's total monthly debts, including amounts owed under the loan, exceed 55 percent of the consumer's monthly gross income.

(3) In the case of a stated income loan, the reasonable belief ~~required~~ *requirement* in paragraph (1) *shall apply, however, for stated income loans that belief* may be based on the income stated by the consumer, and other information in the possession of the person originating the loan after the solicitation of all information that the person customarily solicits in connection with loans of this type. A person shall not knowingly or willfully originate a covered

1 loan as a stated income loan with the intent, or effect, of evading
2 the provisions of this subdivision.

3 (g) A person who originates a covered loan shall not pay a
4 contractor under a home-improvement contract from the proceeds
5 of a covered loan other than by an instrument payable to the
6 consumer or jointly to the consumer and the contractor or, at the
7 election of the consumer, to a third-party escrow agent for the
8 benefit of the contractor in accordance with terms and conditions
9 established in a written escrow agreement signed by the consumer,
10 the person who originates a covered loan, and the contractor prior
11 to the disbursement of funds. No payments, other than progress
12 payments for home-improvement work that the consumer certifies
13 is completed, shall be made to an escrow account or jointly to the
14 consumer and the contractor unless the person who originates the
15 loan is presented with a signed and dated completion certificate by
16 the consumer showing that the home-improvement contract was
17 completed to the satisfaction of the consumer.

18 ~~(h) A person who originates a covered loan shall comply with~~
19 ~~Section 777 of the Insurance Code.~~

20 ~~(i)~~ It is unlawful for a person who originates a covered loan to
21 recommend or encourage a consumer to default on an existing
22 consumer loan or other debt in connection with the solicitation or
23 making of a covered loan that refinances all or any portion of the
24 existing consumer loan or debt.

25 ~~(j)~~
26 (i) A covered loan shall not contain a call provision that permits
27 the lender, in its sole discretion, to accelerate the indebtedness.
28 This prohibition does not apply if repayment of the loan has been
29 accelerated in accordance with the terms of the loan documents (1)
30 as a result of the consumer's default, (2) pursuant to a due-on-sale
31 provision, or (3) due to fraud or material misrepresentation by a
32 consumer in connection with the loan or the value of the security
33 for the loan.

34 ~~(k) A covered loan shall not refinance or arrange for the~~
35 ~~refinancing of a consumer loan such that the new loan is a covered~~
36 ~~loan that is made primarily for the purpose of refinancing, debt~~
37 ~~consolidation, or cash out and that does not result in a net benefit~~
38 ~~for the consumer considering all fees, interest rate, points, other~~
39 ~~costs, and the consumer's stated purpose for seeking the loan.~~

1 ~~(+) A licensed person shall not refinance or arrange for the~~
2 ~~refinancing of a consumer loan such that the new loan is a covered~~
3 ~~loan that is made for the purpose of refinancing, debt~~
4 ~~consolidation or cash out, that does not result in an identifiable~~
5 ~~benefit to the consumer, considering the consumer's stated purpose~~
6 ~~for seeking the loan, fees, interest rates, finance charges, and~~
7 ~~points.~~

8 (j) (1) A covered loan shall not be made unless the following
9 disclosure, written in 12-point font or larger, has been provided to
10 the consumer no later than three business days prior to
11 ~~consummation~~ signing of the loan documents of the transaction:
12

13 CONSUMER CAUTION AND HOME OWNERSHIP
14 COUNSELING NOTICE
15

16 If you obtain this loan, the lender will have a mortgage on your
17 home. You could lose your home, and any money you have put into
18 it, if you do not meet your obligations under the loan.

19 Mortgage loan rates and closing costs and fees vary based on
20 many other factors, including your particular credit and financial
21 circumstances, your earnings history, the loan-to-value requested,
22 and the type of property that will secure your loan. Higher rates and
23 fees may be justified depending on the individual circumstances
24 of a particular consumer's application. You should shop around
25 and compare loan rates and fees.

26 This particular loan may have a higher rate and total points and
27 fees than other mortgage loans and is, or may be, subject to the
28 additional disclosure and substantive protections under Division
29 1.6 (commencing with Section 4970 of the Financial Code. You
30 should consider consulting a qualified independent credit
31 counselor or other experienced financial adviser regarding the
32 rate, fees, and provisions of this mortgage loan before you
33 proceed. For information on contacting a qualified credit
34 counselor, ask your lender or call the United States Department of
35 Housing and Urban Development's counseling hotline at
36 1-888-466-3487 or go to www.hud.gov/fha/sfh/hcc for a list of
37 counselors.

38 You are not required to complete any loan agreement merely
39 because you have received these disclosures or have signed a loan
40 application.

1 If you proceed with this mortgage loan, you should also
2 remember that you may face serious financial risks if you use this
3 loan to pay off credit card debts and other debts in connection with
4 this transaction and then subsequently incur significant new credit
5 card charges or other debts. If you continue to accumulate debt
6 after this loan is closed and then experience financial difficulties,
7 you could lose your home and any equity you have in it if you do
8 not meet your mortgage loan obligations.

9 Property taxes and homeowner's insurance are your
10 responsibility. Not all lenders provide escrow services for these
11 payments. You should ask your lender about these services.

12 Your payments on existing debts contribute to your credit
13 ratings. You should not accept any advice to ignore your regular
14 payments to your existing creditors.

15 (2) It shall be a rebuttable presumption that a licensed person
16 has met its obligation to provide this disclosure if the consumer
17 provides the licensed person with a signed acknowledgment of
18 receipt of a copy of the notice set forth in paragraph (1).

19 (m) (1) A person who originates a covered loan shall not steer,
20 counsel, or direct any prospective consumer to accept a loan
21 product with a risk grade less favorable than the risk grade that the
22 consumer would qualify for based on that person's then current
23 underwriting guidelines, prudently applied, considering the
24 information available to that person, including the information
25 provided by the consumer.

26 A person shall not be deemed to have violated this section if the
27 risk grade determination applied to a consumer is reasonably based
28 on the person's underwriting guidelines if it is an appropriate risk
29 grade category for which the consumer qualifies with the person.

30 (2) If a broker originates a covered loan, the broker shall not
31 steer, counsel, or direct any prospective consumer to accept a loan
32 product at a higher cost than that for which the consumer could
33 qualify based on the loan products offered by the persons with
34 whom the broker regularly does business.

35 (n) A person who originates a covered loan shall not avoid, or
36 attempt to avoid, the application of this division by doing the
37 following:

38 (1) Structuring a loan transaction as an open-end credit plan for
39 the purpose of evading the provisions of this division when the



1 loan would have been a covered loan if the loan had been
2 structured as a closed end loan.

3 (2) Dividing any loan transaction into separate parts for the
4 purpose of evading the provisions of this division.

5 (o) A person who originates a covered loan shall not act in any
6 manner, whether specifically prohibited by this section or of a
7 different character, that constitutes fraud.

8
9 CHAPTER 3. ENFORCEMENT

10
11 4974. (a) Any compliance failure that was not willful or
12 intentional and resulted from a bona fide error, that occurred
13 notwithstanding the maintenance of procedures reasonably
14 adopted to avoid those errors, including, but not limited to, those
15 involving clerical, calculation, computer malfunction and
16 programming, and printing errors shall be corrected no later than
17 45 days after receipt of the complaint or discovery of the error. A
18 person who originates a covered loan shall not be administratively,
19 civilly, or criminally liable for a bona fide error corrected pursuant
20 to this section. *An error in legal judgment is not a bona fide error*
21 *under this section.*

22 (b) If a person who originates covered loans makes a loan
23 where the person knew ~~or should have known of a willful and~~
24 ~~knowing of and showed reckless disregard for a~~ violation of this
25 division by a broker, the person and broker shall be jointly and
26 severally liable for all damages awarded under this division with
27 respect to the broker's unlawful conduct.

28 *This section does not impose or transfer liability for a breach of*
29 *the broker's fiduciary duty.*

30 4975. (a) (1) Any licensed person who violates any
31 provision of ~~Section 4973~~ *Section 4973, 4979.6, or 4979.7* shall
32 be deemed to have violated that person's licensing law.

33 (2) After any action under Section 4978.5 resulting in a
34 conviction, the licensing agency may bring a proceeding to
35 suspend the license of the licensed person for not less than six
36 months and not more than three years.

37 (b) After any action under Section 4978.5 resulting in a second
38 or subsequent conviction, the licensing agency may bring a
39 proceeding to permanently revoke the license of the licensed

1 person or impose any lesser licensed sanction for at least three
2 years.

3 (c) A licensing agency may exercise any and all authority and
4 powers available to it under any other provisions of law, to
5 administer and enforce this division. A licensing agency may
6 charge and collect reasonable costs for enforcing this division.
7 However, nothing in this subdivision shall authorize the
8 imposition or collection of charges or fees that duplicate charges
9 or fees authorized under any other provision of law.

10 (d) Nothing in this section shall be construed to impair or
11 impede a licensing agency's authority under any other provision
12 of law.

13 4977. (a) A licensing agency may, after appropriate notice
14 and opportunity for hearing, by order levy administrative penalties
15 against a person who violates any provision of this division, and
16 the person shall be liable for administrative penalties of not more
17 than two thousand five hundred dollars (\$2,500) for each
18 violation. Except for licensing agencies exempt from the
19 provisions of the Administrative Procedure Act, any hearing shall
20 be held in accordance with the Administrative Procedure Act
21 (Chapter 5 (commencing with Section 11500) of Part 1 of Division
22 3 of Title 2 of the Government Code), and the licensing agency
23 shall have all the powers granted under that act.

24 (b) Any person who willfully and knowingly violates any
25 provision of this division shall be liable for a civil penalty of not
26 more than twenty-five thousand dollars (\$25,000) for each
27 violation which shall be assessed and recovered in a civil action
28 brought in the name of the people of the State of California by the
29 licensing agency in any court of competent jurisdiction.

30 ~~(e) Nothing in this section shall be construed to preclude an~~
31 ~~injured party from bringing a civil action for a violation of the~~
32 ~~division's provisions. Nothing in this section requires exhaustion~~
33 ~~of administrative remedies prior to an injured party bringing a civil~~
34 ~~action.~~

35 (c) *A licensing agency may exercise any and all authority and*
36 *powers available to it under any other provisions of law, to*
37 *administer and enforce this division, including, but not limited to,*
38 *investigating and examining the licensed person's books and*
39 *records, and charging and collecting the reasonable costs for these*
40 *activities. The licensing agency shall not charge a licensed person*

twice for the same service. Any civil, criminal, and administrative authority and remedies available to the licensing agency pursuant to its licensing law may be sought and employed in any combination deemed advisable by the licensing agency to enforce the provisions of this division.

(d) If the licensing agency determines that it is in the public interest, the licensing agency may include, in any action for penalties authorized by subdivision (b), a claim for relief in addition to the penalties, including a claim for restitution; or disgorgement, ~~or damages on behalf of the persons injured by the violation,~~ and the court shall have jurisdiction to award the additional relief.

(e) Nothing in this section shall be construed to impair or impede the Attorney General from representing a licensing agency in bringing an action to enforce this division at the request and on behalf of the licensing agency.

(f) In any action brought by the licensing agency, or the Attorney General *acting at the request and at the behest of the licensing agency*, under this division in which a judgment against a person is rendered, the licensing agency or the Attorney General shall be entitled to recover costs which, in the discretion of the court, may include an amount representing reasonable attorney's fees and investigative expenses for services rendered for deposit in the appropriate fund of that ~~state~~ *licensing agency*.

(g) The amounts collected under subdivisions (a) and (b) shall be deposited in the appropriate fund of the licensing agency to be used by that licensing agency, subject to appropriation by the Legislature, for the purposes of education and enforcement in connection with abusive lending practices.

4978. (a) A person who fails to comply with the provisions of this division is civilly liable to the consumer in an amount equal to any actual damages suffered by the consumer, plus attorneys fees and costs. ~~In the event actual damages cannot be ascertained, upon a showing of harm based on a~~ *For a willful and knowing violation of this division, the person shall be liable to the consumer in an amount not to exceed fifty thousand dollars (\$50,000) the amount of fifteen thousand dollars (\$15,000) or the consumers actual damages, whichever is greater, plus attorneys fees and costs.*

(b) *A provision in a covered loan that violates this division is unenforceable.* A court in which any action is brought by, or on behalf of, an aggrieved consumer for relief may issue an order or injunction to reform the terms of the covered loan to conform to the provisions of this division. The court may, in addition to any other remedy, award punitive damages to the consumer upon a finding that such damages are warranted pursuant to Section 3294 of the Civil Code.

~~4978.5. (a) Any person who originates a covered loan that willfully and knowingly violates Section 4973 shall, upon conviction, be subject to a fine of not more than two hundred fifty thousand dollars (\$250,000), or imprisonment in a county jail, or by both fine and imprisonment.~~

~~(b) An action under this section shall be brought by the district attorney and, notwithstanding any other provision of law, the base fine collected shall be paid to the treasurer of the county in which the action was brought. One-half of the fine shall be allocated by the county to programs that educate consumers about avoiding abusive lending practices, community-based programs to provide low-cost alternatives to subprime credit, and consumer complaint resolution services.~~

~~(c) Nothing in this division limits the power of the state to punish any person for any conduct that constitutes a crime under any other statute. Nothing in this division shall be construed to impair or impede an action under any other provision of law.~~

~~(c) Nothing in this section is intended, nor shall be construed, to abrogate existing common law provisions prohibiting double recovery of damages.~~

4978.6. A person who originates covered loans shall inform any employee, who originates covered loans on behalf of the person, of the administrative, civil, and criminal penalties for a violation of this division.

4979. Upon request, a person who originates a covered loan shall provide the *licensing agency or the* consumer, at no cost, documentation regarding his or her loan that clearly demonstrates whether any loan is a covered loan. This documentation shall include, but not be limited to, full disclosure of the original principal balance, the annual percentage rate, and the total points and fees, as defined in Section 4971.

4979.5. (a) A person who provides brokerage services to a borrower in a covered loan transaction by soliciting lenders or otherwise negotiating a consumer loan secured by real property, is the fiduciary of the consumer, and any violation of the person's fiduciary duties shall be a violation of this section. A broker who arranges a covered loan owes this fiduciary duty to the consumer regardless of who else the broker may be acting as an agent for in the course of the loan transaction.

~~(b) A licensed person, other than a broker, or subsequent assignee shall have no administrative, civil, or criminal liability for a violation of this section.~~

(b) Except for a broker or a person who provides brokerage services, no licensed person or subsequent assignee shall have administrative, civil, or criminal liability for a violation of this section.

4979.6. A person who originates a covered loan shall not make a covered loan that finances points and fees in excess of *one thousand dollars (\$1,000) or 6 percent of the total loan amount original principal balance, exclusive of points and fees, whichever is greater.*

~~4979.7~~

4979.7. *On and after July 1, 2002, a person who originates a consumer loan shall not finance, directly or indirectly, into a consumer loan transaction or finance to the same borrower within 30 days of a consumer loan transaction any credit life, credit disability, credit property, or credit unemployment insurance premiums, or any debt cancellation or suspension agreement or contract fees, provided that insurance premiums, debt cancellation, or suspension fees calculated and paid on a monthly basis shall not be considered financed by the person originating the loan. For purposes of this section, credit insurance does not include a contract issued by a government agency or private mortgage insurance company to insure the lender against loss caused by a mortgagor's default.*

4979.8. The provisions of this ~~act~~ division shall not impose liability on an assignee that is a holder in due course. *The provisions of this division shall not apply to persons chartered by Congress to engage in secondary mortgage market transactions.*

SEC. 3. The provisions of this act shall apply to a consumer loan ~~originated~~ *applied for* on or after July 1, 2002.

SEC. 4. ~~Section 777 is added to the Insurance Code, to read:~~
~~777. (a) Until July 1, 2002, a licensed person shall not sell~~
~~any individual or group credit insurance on a prepaid single~~
~~premium basis in conjunction with any consumer loan unless the~~
~~following conditions are met:~~

~~(1) The licensed person also offers to the consumer the option~~
~~of purchasing all that insurance on a monthly premium basis.~~

~~(2) The licensed person provides to the consumer a separate~~
~~disclosure in 12-point font or larger, with a copy acknowledged by~~
~~the insured, no later than the time of closing, the following notice:~~

INSURANCE NOTICE TO CONSUMER(S)

~~You have elected to purchase credit life, accident and health or~~
~~unemployment insurance in conjunction with this mortgage loan.~~
~~The cost of this insurance is being prepaid and financed at the~~
~~interest rate provided for in the loan.~~

~~This insurance is NOT required as a condition of closing this~~
~~loan and has been included with the loan AT YOUR REQUEST.~~
~~At any time you have the right to cancel any or all such policies~~
~~purchased in conjunction with this loan. You may cancel your~~
~~policy or policies by signing and returning a copy of this notice to~~
~~your lender or you may contact your lender directly.~~

~~If you cancel your insurance within 30 days of the date of your~~
~~loan, then you will receive either a full refund or a credit against~~
~~your loan account. If you cancel your insurance at any other time,~~
~~you will receive either a refund or credit against your loan account~~
~~of any unearned premium.~~

~~YOU MUST CANCEL WITHIN 30 DAYS OF THE DATE OF~~
~~THE LOAN TO RECEIVE A FULL REFUND.~~

CREDIT INSURANCE CANCELLATION

~~I (we) request that the lender cancel the _____ Insurance that I~~
~~(we) purchased in conjunction with my (our) loan dated _____.~~

_____(Date)_____

Consumer signature

— ACKNOWLEDGMENT OF RECEIPT

1 _____
2 ~~I (we) acknowledge receipt of the above notice.~~
3 _____

4 _____ (Date)

5 _____ Consumer signature
6 _____

7 ~~(3) If a consumer elects to cancel, within 30 days of the date of~~
8 ~~the consumer loan, any credit insurance product purchased on a~~
9 ~~single prepaid premium basis in conjunction with a covered loan,~~
10 ~~the licensed person or the insurance company who sold the~~
11 ~~insurance, or the insurance company providing the product, shall~~
12 ~~give the consumer either a full premium refund or a full premium~~
13 ~~credit against the unpaid loan balance.~~

14 ~~(4) If a consumer elects to cancel any single prepaid premium~~
15 ~~credit insurance product purchased in conjunction with a~~
16 ~~consumer loan at any other time, after 30 days of the date of~~
17 ~~issuance, the refund or credit shall be computed using the actuarial~~
18 ~~method.~~

19 ~~(b) Beginning July 1, 2002, a licensed person shall not sell any~~
20 ~~individual or group credit insurance on a prepaid single premium~~
21 ~~basis in conjunction with a consumer loan.~~

22 ~~(c) For purposes of this section, "licensed person," "consumer~~
23 ~~loan," and "credit insurance" have the same meaning as that~~
24 ~~provided in Section 4970 of the Financial Code.~~

25 ~~SEC. 5.~~—The provisions of this act are severable. If any
26 provision of this act or its application is held invalid, that invalidity
27 shall not affect other provisions or applications that can be given
28 effect without the invalid provision or application.

29 ~~SEC. 6.~~

30 *SEC. 5.* No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.

1		_____
2	CORRECTIONS	
3	Digest — Page 2.	
4		
5		_____
6		

